

School Building Authority of West Virginia  
**PROPOSED POLICY & PROCEDURES HANDBOOK CHANGES – LOG OF PUBLIC COMMENTS**  
 July 15, 2019

**Action Key**

A/S     Comment was accepted and supports the proposed policy.  
 A/C     Comment was accepted which resulted in changes to the proposed policy.  
 N        Comment was not accepted

Date	Commenter	Comments	Action	Rationale
<b>§164-1-1. General</b>				
7/1/19	Adam Krason, AIA, NCARB, LEED AP, ALEP, President, AIA West Virginia	<p>AIA West Virginia would like to thank you for meeting with a group of our members on May 16, 2019 to discuss the proposed revisions to the Policy and Procedures Handbook for the School Building Authority of West Virginia. Based upon the review conducted during the meeting, it appears that the intent of the changes is to improve and streamline the design, bidding, and construction process, while also increasing accountability for all parties.</p> <p>A significant amount of unnecessary and duplicated effort is also being addressed through the deletion of the three appendixes and 25 forms, while new policy and procedures address critical items such as reporting of annual energy use, evaluation criteria, and a new Notice of Defective or Non-Confirming Work that will be used to ensure conformity with the construction documents. The document also brings the SBA's Supplementary Conditions into closer alignment with the State of West Virginia Supplementary Conditions approved by the WVAGO.</p> <p>We appreciate that you took the time to meet with us to review the proposed changes, and that you heard and responded to the requests and concerns of local architects. It is clear that our input was valued. AIA West Virginia supports the improvements you are making and we look forward to continuing working together in the future.</p> <p>Respectfully submitted,</p> <p>Adam Krason, AIA, NCARB, LEED AP, ALEP President, AIA West Virginia</p>	A/S	
7/2/19	Patrick McDonald, Assistant Executive Director, Contractors Association of West Virginia, Charleston, WV	<p>The Contractors Association of West Virginia is pleased to provide our support on the proposed changes to the School Building Authority of West Virginia's Policy and Procedure Handbook. The CAWV is a non-profit, trade organization representing nearly 475 firms that are involved directly and indirectly in West Virginia's construction industry. The CAWV is vitally interested in governmental regulatory programs that may impact our members.</p> <p>The CAWV understands that updating of rules is necessary to keep up with building code changes and project scheduling concerns. Our members are interested in</p>	A/S	

		<p>developing rules that will enhance the quality of construction of West Virginia school facilities and maximize the bidding opportunity for large and small West Virginia construction firms, both of which will result in better educational facilities for our students and at competitive costs.</p> <p>The CAWV appreciates the opportunity given to us by the SBA to allow the construction industry to provide input during the updating policy and procedure process. We look forward to working with you to meet the SBA's goal of providing modern and safe school facilities throughout West Virginia.</p> <p>Sincerely,</p> <p>Patrick McDonald Assistant Executive Director</p>		
7/2/19	Winfield Strock, Charleston, WV	<p>Objective: The Authority wishes to establish policies and procedures to assure contractor compliance with the Contract Documents. The Authority also has requested protocols to provide for disciplinary action against contractors who do not meet their contractual obligations.</p> <p>I. The major areas of concern appear to be 1) quality of construction, 2) adherence to project schedule (specifically project completion dates) and 3) project closeout. I propose the following procedures to address these issues.</p> <p>1. Quality of Construction: Currently there is no standard format for rejection of work. A form which establishes notice of rejected work and the resolution of the issue should be executed by the Contractor and the Architect. The Contract Documents should make provisions for three resolutions; a) replacement of defective work b) repair of defective work c) an equitable adjustment in the contract amount equivalent to the cost of replacing the defective work. Copies of the Notice of Rejected Work and the Resolution to be provided to the SBA Project Representative. If the Contractor does not respond within the specified time limits, a Notice of Default should be issued to the Contractor and its Surety.</p> <p>2. Adherence to the Project Schedule: SBA staff has implemented changes to the scheduling requirements contained in the Supplemental General Conditions and the Policies and Procedures Manual that allow the Architect and SBA staff to evaluate the effectiveness of the Contractor's schedule. If the Architect or SBA Project Representative observes a task on the Critical Path exceeding its allotted duration the Contractor will be issued a Notice of Non-Compliance and be given five (5) working days to provide a solution to mitigate the potential overrun. Copies of the Notice of Non-Compliance will be provided to the SBA Project Representative. If the Contractor does not respond within the specified time limits, a Notice of Default should be issued to the Contractor and its Surety.</p>	<p>A/S</p> <p>A/S</p> <p>A/C</p> <p>A/S</p>	<p>Based on these suggestions, we separated the Notice of Non-Compliance/Non-Conformance into two forms (Forms 406-A, 407-A). We also separated Resolution of Non-Compliance / Non-Conformance into two corresponding forms (Forms 406-B, 407-B). Added a Notice of Breach of Contract form if no proper response from the Contractor is received (Form 408). These forms are described in new language in Section 501.034-038</p>

	<p>3. Project Closeout: SBA staff has developed specific protocols for project closeout including a pre-closeout project meeting to ensure that all closeout documents and procedures will be performed in accordance with the Contract Documents. If a Contractor fails to meet these protocols within the specified time limits, a notice of Non-Compliance will be issued by the Architect. Copies of the Notice of Non-Compliance will be provided to the SBA Project Representative. If the Contractor does not respond within the specified time limits, a Notice of Default should be issued to the Contractor and its Surety.</p>	A/S	
	<p>II. In order to accurately evaluate the Contractor's performance over the life of the project, it is necessary to document all instances of non-compliance in Project Documentation and Project Performance. Project Documentation is the responsibility of providing all required documents within the time frames stated in the Contract Documents. Project performance is the adherence to all on site work requirements of the Contract Documents. The requirements for these issues are specified in the AIA, SBA and Project Architect's documents bound in the Project Manual(s). In the event that the contractor has failed to successfully perform any or all of the three major objectives listed above, the records of Project Documentation and Project Performance will provide significant insight as to the cause(s) of such failure.</p>	A/S	
	<p>Project Documentation: I have attached a list of documents required on most SBA projects. The majority are time sensitive. All should be required and logged by the Architect. Each time documentation has not met the contract requirements, the Architect should issue a Statement of Non-Compliance to the Contractor. Copies of the Statement of Non-Compliance will be issued to the SBA Project Representative. If the Contractor does not respond within the specified time limits, a Notice of Default should be issued to the Contractor and its Surety.</p>	A/S	
	<p>1. Project Performance: I have attached a list of sections and paragraphs addressing project performance. This list is not intended to be all-inclusive, but representative of the requirements of most SBA projects. Each time the Contractor fails to meet these (and other) performance requirements, the Architect will issue a Statement of Non-Compliance. Copies of the Statement of Non-Compliance will be issued to the SBA Project Representative and the Contractor's Surety. If the Contractor does not respond within the specified time limits, a Notice of Default should be issued to the Contractor and its Surety.</p>	A/S	
	<p>III. The AIA Contract Documents include the following forms; a) Contractor Request for Information (RFI) b) Architect's Supplemental Instructions (ASI) c) Construction Change Directive (CCD) d) Work Changes Proposal Request (WCPR) e) Change Order (CO). These forms represent the formal communications between Contractor and Architect as pertains to the intent of the Contract Documents as well as changes to the Contract Documents. A post-construction evaluation of these documents will also provide insight regarding the performance of the Contractor.</p>	A/S	

7/2/19	Renee Mahon, Grafton, WV	<p>My name is Renee Mahon. I am a School Counselor in Grafton, WV. I am emailing you in order to give a public comment about policy changes you are making. Myself and other educators were upset about the passing of HB 206. Counties like Taylor will be greatly hurt by open enrollment, so if there is anything in policy you could change to make it so there's not too much loss from some counties and overcrowding in others, it would be greatly appreciated!</p> <p>Also, if there could be something added about no charter schools indefinitely, we would appreciate that as well. We want to stand together and fight back against these things that hurt public schools.</p> <p>Thanks,</p> <p>Renee Mahon</p>	N	We believe these requests are outside of the SBA's duties and mission per WV Code §18-9-D.
7/3/19	Vincent Trivelli, The Law Office of Vincent Trivelli, Morgantown, WV	<p>I am writing on behalf of the West Virginia State Building and Construction Trades Council, AFL-CIO and its division, the Affiliated Construction Trades Foundation ("Building Trades"). The Building Trades represents over 20,000 construction workers from West Virginia and surrounding counties. Many of these workers are not only taxpayers whose taxes support schools but have been employed in the construction of projects funded in whole or in part by the School Building Authority of West Virginia ("SBA"). I ask that you accept this correspondence as the Building Trades comments on the SBA's proposed amendments to its "Policy and Procedures Handbook".</p> <p>Without any accompanying explanation (The Buildings Trades is aware of, has reviewed, and will comment herein on the May 9, 2019 Memorandum regarding proposed revisions to the Handbook.), the SBA's proposed amendments, if adopted would make extensive changes to the SBA's existing policy and procedures. Simply, put the Building Trades believes that the public is entitled to a full explanation of the reasons, findings and determinations that support the proposed amendments. (See West Virginia Code §29A-3A-7.)</p> <p>As noted above, the proposed amendments include changes to a broad range of SBA's Policies and Procedures. The Building Trades, however, will focus its comments on the proposed changes to the SBA's bidding criteria and related provisions.</p>	N	The SBA staff provided a nine-page explanation of the major policy changes in a May 9 Memorandum. This memorandum was further amended in a May 29 Memorandum and was placed in the state register as "supporting documentation" accompanying the Proposed Amendments. Further, a representative of the State Building Trades attended a work session on 5/7/19 to discuss all aspects of proposed changes before Authority approval. Additional information was provided, and discussion was held on 5/29/19 with a State Building Trades rep. in a private meeting to address concerns. We feel we offered ample opportunity to provide input – some of which was incorporated in the Proposed Amendments that were approved by the Construction Comm. on 5/23/29 and by the full Authority on 5/31/19. We feel the full extent of WV

		<p><u>Lowest Qualified Responsible Bidder</u></p> <p>As the proposed amendments state, the law of West Virginia requires public agencies such as to award construction bids (The Proposed Amendments carries forward language regarding the awarding of bids by the SBA. Is not more correct to indicate that bids are awarded by the local county boards of education.?), only the lowest qualified <u>responsible</u> bidder”. (Proposed Amendments, p. 117, §5.3.4 adding the word responsible to the end of the existing section.) The Building Trades concurs with that characterization of the law (see below) but does not concur with the SBA’s proposal to strike the next sentence which states, “Therefore, when utilizing any portion of state funds for a project, county boards of education must consider factors in the SBA Criteria for Selection of Lower Qualified Bidders, and the information from the Contractor’s Qualification Statement, when making determination as to whether a contractor’s bid is not only the lowest, but the most qualified.” (Proposed Amendments, p. 117-117, §5.3.4). The Proposed Amendments also strikes the SBA Criteria for Selection of Lowest Qualified Bidders (Proposed Amendments, p. 150) and the Contractor’s Qualification Statement (Proposed Amendments, p. 304-310).</p> <p>Overall, the SBA proposes to remove all its existing provisions which would allow it and county boards of education to determine what bidder is the lowest qualified responsible bidder. It further proposes not to replace the existing provisions with any meaningful policies or procedures. The Building Trades strongly opposes these actions.</p> <p>West Virginia Code §5-22-1 (b)(1) defines lowest qualified responsible bidder as follows:</p> <p>(b) As used in this section:</p> <p>(1) “Lowest qualified responsible bidder” means the bidder that bids the lowest price and that meets, at a minimum, all the following requirements in connection with the bidder’s response to the bid solicitation. The bidder shall certify that it:</p> <p>(A) Is ready, able, and willing to timely furnish the labor and materials required to complete the contract;</p> <p>(B) Is in compliance with all applicable laws of the State of West Virginia; and</p> <p>(C) Has supplied a valid bid bond or other surety authorized or approved by the contracting public entity.</p> <p>The sections proposed to be removed provide the SBA and county boards of education with the information needed to determine if bidders meet the requirements of the law including any requirements that the public entity adds to the bid documents. The SBA, without any justification, is proposing to remove sections of the SBA Policy and Procedures which have been in place for many years, have resulted in no litigation we are aware of, and have been recognized as part of quality procurement process. These sections we believe have also helped gain public support for many school bond issues.</p>	N	<p>Code §29A-3A-7, has been met with the supplied information and this document which, when finalized, will become a part of the public record.</p> <p>The intent of the proposed change is to eliminate the subjectivity in determining the “lowest qualified responsible bidder” after bids are received and accepted. The changes split the applicable criteria of <i>SBA Criteria for Selection of Lowest Qualified Bidders</i> between bidding requirements (as a condition of accepting a bid in Envelope 1) and evaluation criteria that is explained in Section 501. The SBA believes these are more meaningful and impactful changes.</p>
			N	<p>The SBA believes the information required at the time of bid as described in the <i>SBA Supplemental Instructions to Bidders</i>, Section 400, adequately covers the information necessary to determine the “lowest qualified responsible bidder” as defined in WV Code §5-22-1 (b)(1).</p>

	<p>The removal is simply a step in the wrong direction that will not lead to improved results.</p> <p>In its May 9, 2019 Memorandum noted above, the SBA makes two troubling assertions. First, the SBA asserts that the policies and procedure regarding the selection of the lowest qualified responsible bidder have been found by the West Virginia Supreme Court to be “ambiguous and arbitrary” and therefor constitute “an unenforceable requirement”. (May 9, 2019 Memorandum, p. 3). The SBA Memorandum is simply incorrect.</p> <p>In coming to its assertion, the SBA looks to the West Virginia Supreme Court of Appeals’ decision in <u>Wiseman Construction Company, Inc. v. Maynard C. Smith Construction Company, Inc.</u> (779 S.E.2D 893 (W.Va. 2015)). In that decision, the Court found that the Purchasing Division and the Lottery Commission failed to exercise reasonable discretion in determining that the second lowest bidder was the lowest qualified responsible bidder. In the <u>Wiseman</u> case, they held that given the “unique set of facts presented in the case” (The Court noted that the bid documents were faulty stating, “The bid documents erroneously provided that “[t]he Proposal Form includes a section in which the references should be listed.” However, neither “Section I” nor “Section II” of the Agency’s bid form included a section in which the references could be listed. Furthermore, no information concerning references was among the specified “Required Documents” or was otherwise addressed in the Agency’s published requests for bids. (<u>Wiseman</u>, <i>supra</i> 897)) that the Purchasing Division made a “nonsensical” decision, showed a “complete lack of intelligent use of its discretion” and offended “one’s sense of fair play and was an arbitrary abuse of discretion inconsistent with the letter and spirit of our public procurement laws.” (<u>Wiseman</u>, <i>supra</i> 902-903).</p> <p>Whatever mistakes and nonsensical actions were made by the Lottery Commission in no way transform the existing SBA Policy and Procedures into ambiguous, arbitrary or unenforceable requirements. Rather, the Court in <u>Wiseman</u> looked to West Virginia Code §5-22-1 and confirmed that public agencies must either reject all bids and solicit new bids or award the construction contract to the lowest qualified responsible bidder meaning “the bidder that bids the lowest price and meets the requirements in connection with he bid solicitation”. (<u>Wiseman</u>, <i>supra</i> 899).</p> <p>The Court further rejected the argument that a public agency must award the bid to the lowest cost, licensed, bonded bidder holding (The impact of the SBA’s Proposed Amendments could be the awarding of bids to such bidders.):</p> <p>We therefore reject MCS’s argument that when specified construction services are sought from licensed, bonded contractors, an agency <i>must</i> make the award to the low cost bidder pursuant to West Virginia Code § 5-22-1(d). We agree that a bidder holding</p>	<p>N</p> <p>The SBA feels that the misinterpretation of bidding requirements by the Purchasing Division and the Lottery Commission (as described in this case) mirror the steps LEAs may find themselves in when determining which of the criteria of the SBA Criteria for Selection of Lowest Qualified Bidders (18-Points) is applicable/necessary. If a bidder meets only two of the eighteen points while another bidder meets all eighteen, the phrase “No single criteria will be considered the controlling factor in determining whether a bid is or is not the ‘best’ bid” that is to guide LEAs to a determination undoubtedly leads to arbitrary interpretation. The case was brought because of an assumption of requirements by a contractor that the contracting agency agreed with, but because it was not a clear condition of bidding, the requirement was determined to be arbitrary and unjust. The SBA’s argument is the contracting entity (LEA via the SBA) has the ability to interpret the application of the 18-points with ambiguity. The Proposed Amendments move applicable parts of the 18-points to the bid proposal which create distinct requirements that allow no space for opinionative interpretation. Furthermore, at least five of the eighteen points are no longer a requirement of Fairness in Competitive Bidding Act (WV Code §5-22-1) after it was changed in the 2016 legislative session. Therefore, the SBA or LEA cannot establish bidding criteria that are not within the State’s Code.</p> <p>N</p> <p>While we respect this opinion, as stated in a previous comment response, the SBA believes the information required</p>
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		<p>the requisite contractor license is “qualified.” However, the statute has the phrase “lowest qualified responsible bidder.” <i>Id.</i> If MCS’s argument were adopted, then the word “responsible” would be read out of the statute. <i>See</i> Syl. Pd. 4, <i>Osborne v. United States</i>, 211 W.VA. 667, 668, 567 S.E.2D 677, 687 (2002) (stating each word of statute should be given their common, ordinary, and accepted meaning). Given the common meaning of the word, “responsible” relates to more than a showing that the bidder holds the requisite license. A “responsible bidder” is a contractor “who possesses the requisite skill, judgement, and integrity necessary to perform the contract requested, and who has the financial resources and ability to carry the cast to completion.” Black’s Law Dictionary 1506 (10<sup>th</sup> ed.2014). (<i>Wiseman, supra</i> 900) (The Building Trades is concerned with the concept that a contractor with “the requisite contractors’ license is “qualified.” A contractor who holds a General Contractor’s license could simply have been grandfathered in many years ago and never build a structure anywhere near the complexity of a school. A general contractor may have taken the GC test but may only build fast food stores, motels or gas stations – again, not necessarily qualified to build a school which is much larger, and more complicated than a restaurant, gas station or motel. Section 6.1.1 (Proposed Amendments, p. 119) is an apparent example of this concern. That is, the Proposed Amendments strike the requirement that the Contractor Qualification Statement be submitted, and substitutes that the Contractors that are not on probationary status with the SBA “shall be deemed qualified” upon review and acceptance of all required information by all parties. Without the information contained in the Contractor Qualification Statement the SBA and the local school board would be unable to judge a Contractor’s and subcontractor’s qualifications.</p> <p>In addition, the Court in <i>Wiseman</i> specifically upheld the “prerogative’ of public agencies to, “establish pre-qualification standards premised upon a contractor’s technical competence and experience construction similar facilities in order to determine if the bidder was qualified and responsible.” (<i>Id</i>)</p> <p>The SBA’s assertions in its May 9<sup>th</sup> Memorandum are incorrect and its reliance on the <i>Wiseman</i> decision is misplaced.</p> <p>In its May 9<sup>th</sup> Memorandum, the SBA also asserts that the continued use of its existing policies and procedures regarding determining the lowest responsible qualified bidder would, “become an unnecessary project cost and a duplication of information deemed sufficient by the receipt of a performance bond and the signing of the state purchasing affidavit.” (May 9<sup>th</sup> Memorandum, p. 3) The SBA’s May 9<sup>th</sup> Memorandum indicates that the SBA Criteria for Selection of Lowest Qualified Responsible Bidders is being replaced by a “consistent program of compliance documented by notices and/or reports by the project’s Architect of Record”. This program the SBA asserts is “the most effective case against a contractor(s) who does not perform acceptable on a job” (May 9<sup>th</sup> Memorandum, p. 3). Not only is there no evidence or support for these statements, a quick review of the document shows the inadequacies of these replacements.</p>		<p>at the time of bid as described in the SBA Supplemental Instructions to Bidders, Section 400, adequately covers the information necessary to determine the “lowest qualified responsible bidder” as defined in WV Code §5-22-1 (b)(1). Otherwise, unnecessary high barriers of entry are created for companies wishing to expand. The SBA feels that with a documented system of accountability that is introduced in a later chapter, every Contractor that wishes to construct new schools understands they will be subject to an evaluation system that could prevent them from obtaining future work if they display a pattern of poor conformance / compliance to project requirements.</p>
	N			<p>The SBA believes this is achieved by the receipt of the information required at the time of bid as described in the <i>SBA Supplemental Instructions to Bidders</i>, Section 400 of the Proposed Amendments.</p>
	N			<p>The Contractor Qualification Statement was the information gathering tool to for the 18-Points. Because these points have now been moved to the bidding tasks and evaluation criteria, there is no need to require a Contractor to submit this information after a bid is received. Evidence supporting the most effective case against a contractor(s) who does not perform acceptably is a consistent, well-documented program of compliance and accountability was suggested by our Policy Consultant who has gained</p>

	<p>The Proposed Amendments provide that the SBA staff shall work with LEA's to "establish a consistent, well-documented program for compliance, conformance and accountability. The performance of each party to a contract that is executed with the use of SBA Funds shall receive an evaluation of all required tasks." (Proposed Amendments, p 167) (The Proposed Amendments make similar changes for Architects, Engineers, and Construction Managers. These issues the Building Trades have raised regarding Contractors is equally applicable to those professions)</p> <p>The Proposed Amendments contain few details of this future project evaluation. The Proposed Amendments state that at the conclusion of a project contractors and subcontractors will be evaluated on "specific factors relating to conformance and compliance of the Contract Documents" including but not limited to quality of construction relation to the number and severity of non-conformance notices received during the construction, project documentation task outlined in the conformance notices, compliance with West Virginia Division of Labor reporting requirements and adherence to the project schedule. (Proposed Amendments, p 167-168).</p> <p>Not only does this program not yet exist, it is an after the project completion program with general criteria that fall short of a comprehensive evaluation of a contractor's compliance with federal and state laws designed for the protection of employees and the public.</p> <p>It appears that the SBA is abandoning its right to, "establish objective pre-qualification standards premised upon a contractor's technical competence and experience in construction similar facilities in order to determine if the bidder was qualified and responsible." This "head-in-the-sand" approach will then be pushed upon Counties who receive SBA funds as the standard to follow and in turn pressure LEA's to abandon their rights as well.</p> <p>The Building Trades urges the SBA to restore its language regarding the lowest qualified responsible bidders including restoring the stricken language discussed above as well as the SBA Criteria for Selection for Selection of Lowest Qualified and the Contractor's Qualification Statement. This restoration should last at least until an acceptable replacement process is fully developed and formally adopted after hearing and comment.</p> <p><u>Additional Comments</u> As noted above, the Proposed Amendments make numerous changes to the SBA's Policies and Procedures, both large and small. The Building Trades will briefly discuss some of these proposed changes. In addition, the Building Trades will propose some additions to existing language or proposed amendments.</p> <p>Section 6.1.2 (Proposed Amendments p. 119) The changes in this section appear to limit the issues that result in probation to matters of concern tot SBA projects and appears to limit the application of probation to contractors only and not to</p>		<p>considerable experience in construction litigation and arbitration over the last thirty years. The SBA will continue to work with the LEAs and Consultants over the coming months to develop this accountability program. We have created increased accountability requirements for all parties involved in an SBA project, including the SBA staff. As stated previously, we worked with a representative of the Building Trades to further strengthen and clarify the evaluation criteria and will continue to do so. These changes assure conformance and compliance to all contract documents, as well as all applicable state and federal laws.</p>
		N	<p>We strongly disagree that this is a "head-in-the-sand" approach and feel it is quite the opposite. We believe this policy creates clear and fair bidding standards, active project administration roles for all parties involved, and a data-driven evaluation program that requires strict conformance and compliance to all project requirements. We know that we do not want subjective evaluation criteria – some of which is not in accordance with the Fairness in Competitive Bidding Act (WV Code §5-22-1) – for bidders that leave the LEAs we serve susceptible to incorrect interpretation and potential litigation. For these reasons, the SBA has issued these Proposed Amendments.</p>
		N	<p>In keeping with the increased accountability theme, contractors are held responsible for their subcontractors.</p>



	<p>subcontractors. This section and its subparts should apply to both contractors and subcontractors. Subpart (d) should be expanded to included violations of all federal and state laws and regulations including but not limited to labor, employment laws, environmental laws, and tax laws. (The Building Trades notes that throughout the Proposed Amendments, it is either unclear or not indicated whether provisions apply to both contractors and subcontractors. The Building Trades believes that in most cases the provisions should apply to both and changes should be made to ensure that it is specified.) In addition, the section should be expanded to poor performance, non-compliant work performance and violations of law by parties related to contractors and subcontractors. Contractors placed on probation, regardless of their standing as a prime or subcontractor, must not only be prevented from bidding but also from being listed as a subcontractor on any project.</p> <p>With regard to poorly performing subcontractors, prime contractors should be held responsible for their subcontractors performance and compliance with the law.</p> <p>Section 6.3.4 (Proposed Amendments, p. 122) The Proposed Amendments offer no explanation for replacing “Owner and Architect” with “SBA”. Could not the SBA be added without removing the others?</p> <p>Section 6.3.6.1(b) (Proposed Amendments, p. 124) The subsection is unclear because only major subcontractors are submitted with the bid. Subcontractors should be licensed at the time of bid.</p> <p>Section 3.10.4 (Proposed Amendments, p. 128) The establishment of a recovery schedule without an endpoint and penalty is open to abuse and project delay. A schedule of liquidated damages is important for the protection of the owner.</p> <p>Section 7.1.3 (Proposed Amendments, p. 132) There is no justification provided for the establishment of overhead and profit for change orders. In addition, it appears that the cumulative effect could be excessive.</p>	<p>A/C</p> <p>A/S</p> <p>A/C</p> <p>N</p> <p>A/C</p> <p>N</p>	<p>Changed Chapter 400 – Section §6.1.2 (d) to read “... whose infractions of all applicable federal and state laws and regulations, including, but not limited to labor law, employment law, environmental law, and tax laws have been documented...”</p> <p>We agree and this is supported in the proposed amendments.</p> <p>Agreed and changed. Approval needed from all three entities.</p> <p>Not sure what is unclear. Contractors must have agreements with licensed subcontractors.</p> <p>The schedule requirements in 410 that govern this section require a recovery schedule to be in place before the submission of the Contractor’s next Application for Payment. Therefore, because a Contractor undoubtedly would like to be paid, the endpoint would most likely be less than 30 days. We agree that a schedule of liquidated damages is an important protection of the owner. We have removed the requirements for a computation of the costs of actual damages in Section 300.13 and in Section 401 - §9.11.1</p> <p>This calculation sets a “maximum” and was developed in coordination with Architects and Contractors in the CAWV/AIA Joint Task Force review of the State Purchasing Supplemental Conditions.</p>
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		<p>Section 9.11.2 (Proposed Amendments, p. 138) The use of the term “strikes” should be limited to strikes by delivery or vendor entities, not strikes on the project at issue otherwise the document is in conflict with the AIA contract.</p> <p>As discussed above, the Proposed Amendments are numerous and comprise nearly 400 pages. The Building Trades have attempted to set out its major concerns as well as additional issues contained in the proposal. Due to the size of the Proposed Amendments and the time frame there are likely others.</p> <p>The SBA provides critical roles in ensuring quality education to this States’ children and protecting the public’s funds are spent in a responsible manner. The Building Trades, as discussed herein, have deep concerns that the Proposed Amendments undercut the SBA’s long-standing efforts to fully implement these two roles.</p> <p>Thank-you for considering these comments.</p> <p>Sincerely,</p> <p>Vincent Trivelli</p>	N	We could not locate a conflict, and this language aligns exactly with the State Purchasing Supplemental Conditions that were developed in coordination with Architects and Contractors in the CAWV/AIA Joint Task Force.
7/5/19	Ted Shriver, AIA, Williamson Shriver Architects, Charleston, WV	<p>First let me say thank you so much for allowing me to be one of the stakeholders in the process of the new Rule. While everyone can’t get their way, this process was welcomed and very much appreciated.</p> <p>Here are my very few comments:</p> <p>100.017 “A Major Improvement Plan (MIP) Plan”</p> <ul style="list-style-type: none"> <li>• This is stated as required in the new CEFPP’s.</li> <li>• In the past, Major Improvement Plan and MIP have been used synonymously but I feel they are different or so I have experienced. SBA Form 145a (100-G) is required as a part of the annual updates. This form is called Major Improvement Program projects. I’ve also completed this form regardless of the funding source. When the phrase and especially the abbreviation (MIP) is added to the 100.017 language it has the connotation that is MIP funding only and I don’t think that’s the case.</li> <li>• I don’t see where Major Improvement Plan (MIP) is in WV Policy 6200 for CEFPP’s and SBA Form 147 (100-F) is called Building Improvement Cost Summary. There is not a “TAB” in the Alpha FCA tool to address this requirement. Maybe be called Building Improvement Plan (BIP) to make it clearer? Maybe SBA 100-G should be revised as well but maybe I’m that one that’s confused.</li> </ul> <p>101.021</p> <p>This statement has the margin of \$50,000 if the cost is increased an Amendment is required. This seems low to me and will require numerous Amendments.</p>	<p>A/S</p> <p>A/C</p> <p>N</p>	<p>MIP abbreviation struck, Major Improvement Plan is different from MIP funding</p> <p>This is just relative to scope change. Budget amendments are not necessarily required. This \$50,000 total aligns with the minimum SBA grant available.</p>

		<p>SBA Form 178 (500)</p> <p>Thank you for adding the “check boxes” but I feel the Form still has some confusion. Not everybody is required to validate the items and sign the form. For instance the TAB or Commissioning is a direct contract with the owner and that entity. Another item would be the diagrammatic floor plans. This is required by the A/E and not the contractor. Some projects don’t have HVAC as a scope or a SFM Certificate of Occupancy so maybe this should have a NA box.</p> <p>Thanks again. Ted Shriver, AIA Williamson Shriver Architects</p>	A/C	N/A is used in many occasions on a case by case basis. Added in the instruction paragraph to write “N/A” over the corresponding check box where appropriate
6/6/19, 6/14/19, 6/28/19	Debra Sullivan, Member, WV Board of Education, School Building Authority of WV, Charleston, WV	<p>Note: Standardize use of SBA Staff vs. SBA staff (recommend lower case s for staff throughout!)</p> <p>Note: Standardize use of LEA vs. county board of education throughout</p> <p>Note: I did not mark “staff” and “LEA” citations throughout figuring that someone would do a “find and replace” function!</p> <p>Note: No need to put quotation marks around “Needs” Grants</p> <p>Note: career technical centers (rather than vocational centers) – check w/ WVDE for best language to use!</p> <p>Note: Standardize use of abbreviations</p> <p>Note: Standardize WVBE throughout</p> <p>Note: Use oxford commas throughout</p> <p>Note: The term “junior high” is no longer used. Remove throughout When specific numbers are listed, spell out the number and show in parenthesis</p> <p>200.081. Site Feasibility – Consider adding “Environmental Impact” as a feasibility study.</p> <p>202.062. (b) – Use lettering rather than numbering items in subsection</p> <p>202.062. (b)(5) – Because “A reduction in the number of buildings to be maintained” suggests bias toward consolidation, would a better phrase be “more efficient use of facilities”?</p>	<p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>N</p> <p>A/C</p> <p>A/C</p>	<p>SBA staff referenced throughout the policy</p> <p>LEA standardized throughout</p> <p>Corrected</p> <p>Used “career technical centers” throughout</p> <p>Corrected from SDE, etc.</p> <p>Corrected in many instances</p> <p>Removed throughout Corrected in many instances, specifically in contract supplements</p> <p>Because it is difficult to quantify “environmental impact” in a feasibility study related to site development costs, we feel this is adequately covered in Chapter 2 of WVDE Policy 6200</p> <p>Corrected</p> <p>Agreed &amp; Changed</p>

	<p>202.063. These items need to match the sections following. “List of Deficiencies and Priorities”, “Methods for Performing Maintenance”, “Maintenance Plan Cost Summary”, and “Timeline for Implementing the Plan” must align with sections listed and sections described</p> <p>206.031. Parallel construction needed in description verbiage</p> <p>207.011. EOS calculation for Grades 5-8 should be 425</p> <p>300.071. Lettering of subsections after subsection f continues with “j” then “i”... should be “g” then “h”</p> <p>300.081. Numbering of subsequent sections should continue from 300.082, not 300.083</p> <p>300.085 (Now 300.085) Just refer to the long-titled form as “SBA Form 403-B” throughout section after first reference</p> <p>301.04. Parallel structure needed in description verbiage in V. Program of Spaces and Space Descriptions, Items A-J</p> <p>304 and 305– Note: elsewhere these titles (CA, Construction Analyst and CMA, Construction Manager) are capitalized. Standardize one way or the other, abbreviate or do not abbreviate</p> <p>SBA Supplemental Instructions to Bidders §6.3.1.1 – 4:00 p.m. Eastern Standard Time – Question: what if the bid is submitted during Daylight Savings Time?</p> <p>SBA Supplemental General Conditions §3.15.2 – specify “the worksite” on what is to be cleaned up</p> <p>SBA Supplemental General Conditions §11.1.5 – specify if blasting operations “are involved in the project scope”</p> <p>410 – When describing the term Contractor, it is no longer necessary to describe as General Trades Contractor because most projects will be bid as a single-prime project</p> <p>410.0110 – add “against” after the word “standard”</p>	<p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p> <p>A/C</p>	<p>Titles changed and “Timeline for Implementing the Plan” was unstruck to align with the list of Maintenance Plan components.</p> <p>Corrected</p> <p>Corrected – Grade 5 calculated different from Grades 6-8</p> <p>Corrected</p> <p>Corrected</p> <p>Corrected</p> <p>Corrected</p> <p>Construction Analyst changed &amp; used throughout, rather than “CA” abbreviation which is more commonly used by Architects as a Construction Administrator. CMA used as an abbreviation for Construction Manager throughout</p> <p>Changed to “Eastern Time”</p> <p>Clarified</p> <p>Clarified</p> <p>Agreed &amp; Corrected</p> <p>Corrected</p>
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		Form 100-A – Item 3(c) suggest removing the phrase “politically initiated rather than”	A/C	Phrase removed
<b>§164-1-2. Incorporation by Reference</b>				
<b>§164-1-3. Severability</b>				
<b>Policy &amp; Procedures Handbook – Chapter 1</b>				
<b>Policy &amp; Procedures Handbook – Chapter 2</b>				
6/24/19	Eddie McLiney, McLiney and Company, Mission, KS	<p>Section 210.05. It is not clear to me.</p> <p>Cost of Issuance can include; local attorney (if not on staff), bond attorney and municipal advisor. These services are not competitively sourced because the school district relies on those experts to give them advice and they want the people they trust, not necessarily the cheapest. In some instances, it maybe to the district advantage to get a bond rating and insurance and there could be an underwriter spread. Those fees would also be considered cost of issuance but are negotiated if needed at the time of issuance.</p> <p>Based upon the recommendations of the handbook the experts are on the selection committee. I don’t know how to competitively bid those services when a district is not sure they will even have a project or an idea of the project size. Therefore, I believe the first sentence should be removed entirely. The district can then choose the experts they are most comfortable using.</p> <p>Please let me know if you have any questions.</p> <p>Eddie</p>	A/C	Agreed. The term “competitively sourced” does not align with the solicitation of professional services. Also, because this portion of work does not apply to the SBA project, consideration should be given to local decision-making. We agree with the comment and have removed the first sentence of 210.05.
7/1/19	Andy Cocina, Wendel Companies, Clarksburg, WV	<p>Section 210 - I think the guidance you’re providing to Counties is excellent. Many Counties lack the engineering or financial experience to successfully use this type of a project and have been taken advantage of by Energy Services Companies. I applaud you and the team at the School Building Authority for acting in the best interests of Counties and being guardians of the taxpayers funds.</p> <p>The only suggestion you might want to consider is the attached affidavit. (Affidavit for ESCO – Official Statement of Proposer) This document binds the respondent of the RFP to the open book terms and conditions.</p> <p>Many thanks, Andy</p>	<p>A/S</p> <p>N</p>	<p>We believe the intent of this form is already included in Section 7 of the RFP (Form 210)</p>
7/1/19	Jeffrey W. Smell, Owner, County	Section 210 - Please accept this email as a request to have language revised as it specifically relates to project team member: Licensed Municipal Advisor	A/C	A Licensed Municipal Advisor is a high-level accreditation, which requires skill

	Roads Leasing, LLC, Bridgeport, WV	<p>I feel a better team member description would be: Independent Lease-Purchase Financing Specialist</p> <p>I appreciate the consideration on this matter.</p> <p>Jeffrey W. Smell</p>		<p>and professional knowledge that far exceeds the intent of this requirement. There availability professionals to provide this service in WV is limited. Upon further discussion, an Independent Finance Representative (Third Party) is a better description of the team member that fits the intent of the requirement. This change is reflected in 210.02.(b).</p>
7/5/19	Audra Blackwell, MBA, Business Development Manager, Energy Systems Group, Charleston, WV	<p>This public comment is in reference to Title Series 164-01, page 70, 210. Requirements for Grants to Supplement Energy Performance Savings Contracts and the related RFP:</p> <p>ESG is an accredited energy services company (ESCO) with over 25 years of experience in performance contracting. Our region is unaware of any agency or authority requiring a licensed municipal advisor to be part of a selection committee to evaluate the feasibility of an ESCO proposal. We are unaware of the expertise or capabilities a licensed municipal advisor has in evaluating the “feasibility of a proposal to an energy performance savings contract”.</p> <p>Additionally, rarely do we see an attorney on the proposal review team. Typically, this expertise (and expense) is reserved for after a selection is made, a comprehensive audit is complete, a desired project identified and a performance contract draft is written and ready for legal review.</p> <p>The scoring criteria in the RFP for a Performance Services project starting on page 252 includes 5 points for the optional interview per page 255. We suggest that information gleaned from both the proposal and interview should be used to score each of the categories, thus the 5 points reserved for the interview could be reassigned to another category such as Experience and Qualifications. There is no use to have the interview as a separate scored piece.</p> <p>In the RFP, the ESCO should be evaluated on experience in providing guarantees and meeting the guarantee of energy savings. The ESCOs should also be evaluated on the number of performance contracts that they have actually implemented. Each ESCO should be asked to provide their Financial Information, such as the firm’s most recent financial statements or annual report for the past two years, their current financial condition including most recent quarterly financial report, and accounting firm information if their documents were not produced in house. The ESCO should indicate the name, address and phone number of the firm that prepared the financial statements. The ESCO should be asked the number of performance contracts it has completed in its history. This information should weigh in on the 30 points for financial terms.</p> <p>Lastly, we would like to see the proposers’ scores being made available to all who proposed on a given opportunity once the selection is made.</p>	<p>A/C</p> <p>N</p> <p>A/C</p> <p>N</p> <p>A/C</p>	<p>Per a suggestion from a previous commenter, this Licensed Municipal Advisor accreditation has been changed. We do feel we need an independent third-party to provide a fair review the project proposals.</p> <p>We feel an attorney should be a part of the selection team, so the full understanding of the solicitation is included in the contract.</p> <p>We agree and have made this change in the optional interview description.</p> <p>Project experience is already a required section of the proposals. We feel including an ESCO’s Financial Information may be too much information required for in a proposal, however it may be a requirement for a county to secure a lease-purchase agreement. We will monitor this for future consideration.</p> <p>Agreed and a requirement is added to the “Final ESCO Selection” section.</p>

		Thank you for consideration of these comments.		
<b>Policy &amp; Procedures Handbook – Chapter 3</b>				
<b>Policy &amp; Procedures Handbook – Chapter 4</b>				
6/__/19	Kimberly Board, Elkview, WV	I believe the elimination of the 18-point responsible contractor bid criteria is the worst thing the SBA could propose.	N	We disagree with this opinion. We believe this policy creates clear and fair bidding standards, active project administration roles for all parties involved, and a data-driven evaluation program that requires strict conformance and compliance to all project requirements. We know that we do not want subjective evaluation criteria – some of which is not in accordance with the Fairness in Competitive Bidding Act (WV Code §5-22-1) – for bidders that leave the LEAs we serve susceptible to incorrect interpretation and potential litigation. For these reasons, the SBA has issued these Proposed Amendments.
6/19/19	Tamera Bush, South Charleston, WV	As a representative of construction workers who build schools and as taxpayers who foot the bill we want quality projects.		
6/21/19	Charles Britton, Charleston, WV	Your proposal to allow any contractor regardless of their track record to be awarded schools is terrible.		
6/26/19	Judy L. Hudson, Scott Depot, WV	Sincerely		
6/27/19	Linda Hamilton, Dispatcher, IUOE Local #132, Glen Dale, WV	Name Address City, State & Zip		
6/27/19	Mat Kitchen, Hurricane, WV			
6/27/19	Jon Smith, Charleston, WV			
6/27/19	Roger Harris, Glenwood, WV			
6/27/19	Joseph _____, Buffalo, WV			
6/28/19	Angelo S. Arbaugh, St. Albans, WV			
6/2/19	Charles M. Matthews, South Charleston, WV			
6/28/19	Brett Matthews, Sod, WV			

6/28/19	Chris Gillenwater, Chesapeake, WV			
7/1/19	Paul Breedlove, Kenna, WV			
7/1/19	Neil Huffman, Assistant Business Manager, IUOE Local 132 Union Hall, Charleston, WV			
7/1/19	Jason Fletcher, Local 132, Fairmont, WV			
7/2/19	Matt Pauley South Charleston, WV			
7/2/19	Howard Thomas, Dunbar, WV			
7/2/19	Craig Mosteller, Sod, WV			
7/5/19	Roger Craig, Poca, WV			
7/5/19	Rick Neac, Ona, WV			
7/5/19	Robert Huffman, Ripley, WV			
6/20/19	Scott Brewer, New Haven, WV	<p>I am writing to oppose the WV School Building Authority's plan to eliminate the 18 Point Bid Criteria from the new policies proposal.</p> <p>While I agree the current language could be improved, completely eliminating it is an open invitation for unscrupulous contractors to prey on public funds.</p> <p>There are numerous unqualified contractors, bonded and licensed, without the skill or ability to add a porch on a house, much less build a school. They could never reach the</p>	N	<p>We respect this opinion; however, we feel the concerns expressed here are unwarranted. We believe this policy creates clear and fair bidding standards, active project administration roles for all parties involved, and a data-driven evaluation program that requires strict conformance and compliance to all project requirements. We feel that</p>



		<p>level of "qualified" or "responsible", and should not be building the schools our children and grandchildren will be attending.</p> <p>The "lowest qualified responsible bidder" language is one of the most important policies the SBA has adopted in my lifetime. There's no reason to reverse course at the ultimate expense of quality for the children, and expense to the taxpayers.</p> <p>Sincerely,</p> <p>Scott Brewer New Haven, WV</p>		<p>through these proposed amendments, we empower LEAs to more clearly identify the "lowest qualified responsible bidder." We know that we do not want subjective evaluation criteria – some of which is not in accordance with the Fairness in Competitive Bidding Act (WV Code §5-22-1) – for bidders that leave the LEAs we serve susceptible to incorrect interpretation and potential litigation. For these reasons, the SBA has issued these Proposed Amendments.</p>
6/21/19	Michael Rhodes, Business Manager / Financial Secretary, Plumbers & Pipefitters 625, Charleston, WV	<p>As a representative of construction workers, I am writing to express my concerns with the proposed Policy and Procedures Handbook. I am particularly concerned with the proposed elimination of the 18-point responsible contractor bid criteria and questionnaire.</p> <p>I see nothing in the proposed policy where a contractor must show they have ever successfully built a school before, or where a subcontractor even needs to show they have not been banned from public construction work in our state or other states.</p> <p>I also don't see anything that prohibits the use of subcontractors who have been banned from bidding public projects.</p> <p>The public construction industry needs a definition of the term lowest responsible qualified bidder. Please reconsider this proposal.</p> <p>Sincerely,</p> <p>Name Address</p>	N	<p>We respect this opinion; however, we feel the concerns expressed here are unwarranted. We believe this policy creates clear and fair bidding standards, active project administration roles for all parties involved, and a data-driven evaluation program that requires strict conformance and compliance to all project requirements. We know that we do not want subjective evaluation criteria – some of which is not in accordance with the Fairness in Competitive Bidding Act (WV Code §5-22-1) – for bidders that leave the LEAs we serve susceptible to incorrect interpretation and potential litigation. For these reasons, the SBA has issued these Proposed Amendments.</p> <p>The Fairness in Competitive Bidding Act does not require, nor has the SBA ever required, that contractors must show they have successfully built a school before. LEAs may not accept bids from Contractors and Subcontractors are not who have been banned from bidding public projects. The Legislature has defined the term "lowest qualified responsible bidder" and we have followed this definition in the Proposed Amendments.</p>
6/27/19	Steve McDiffitt, IUOE local 132 pipeline			
7/1/19	Terry Turley, Membership Development, IBEW 466, Hurricane, WV			
7/1/19	W. Craig Harvey, Business Manager, WV Appalachian Laborer's District Council, Charleston, WV			
7/2/19	Andrew R. Gannon III, Business Agent, Plumbers and Steamfitters UA Local Union 486, Martinsburg, WV			

6/26/19	Justin Williams, Esq. MPA, Charleston, WV	<p>I am writing to express my firm opposition to the WV School Building Authority plan to remove the 18 Point Bid Criteria from the proposed new policies, within the Policy and Procedures Handbook.</p> <p>It is worrisome that nothing in the proposed policy requires a contractor to show they have ever successfully built a school before. Just because a contractor has a license and can get a bond does not mean they are qualified to build a school. Further I don't believe that there is anything that prohibits a subcontractor who has been banned from public projects from receiving the work.</p> <p>The public construction industry needs a definition of the term lowest responsible qualified bidder and the taxpaying public deserves to know that our dollars are being spent to qualified contractors.</p> <p>The SBA has been a leader in developing a rational, commons sense definition of the term "lowest qualified responsible" bid. There is no reason to reverse this leadership.</p> <p>Finally, I believe it is important that we know that our schools are being built by qualified contractors because this isn't just about the building IT IS ABOUT THE KIDS in the schools.</p> <p>Sincerely,</p> <p>Justin Williams, Esq. Charleston WV</p>	N	<p>We respect this opinion; however, we feel the concerns expressed here are unwarranted. We believe this policy creates clear and fair bidding standards, active project administration roles for all parties involved, and a data-driven evaluation program that requires strict conformance and compliance to all project requirements. We know that we do not want subjective evaluation criteria – some of which is not in accordance with the Fairness in Competitive Bidding Act (WV Code §5-22-1) – for bidders that leave the LEAs we serve susceptible to incorrect interpretation and potential litigation. For these reasons, the SBA has issued these Proposed Amendments.</p> <p>The Fairness in Competitive Bidding Act does not require, nor has the SBA ever required, that contractors must show they have successfully built a school before. LEAs may not accept bids from Contractors and Subcontractors are not who have been banned from bidding public projects. The Legislature has defined the term "lowest qualified responsible bidder" and we have followed this definition in the Proposed Amendments.</p>
6/27/19  6/28/19	<p>Michael Leo, President &amp; CEO, Jarvis, Downing &amp; Emch, Inc.</p> <p>Dan Loy, Vice President &amp; Director of Operations, Jarvis, Downing &amp; Emch, Inc</p>	<p>I am writing to document my disappointment with the West Virginia School Building Authority's plan to remove the 18 Point Bid Criteria from their proposed new policies.</p> <p>Without this language in place, how will the SBA know if a contractor is complying with all state and federal regulations, has a good safety record, and a sound financial history, among other important criteria? These standards are an important part of addressing "the educational planning and school construction needs of the State in on efficient and economical manner", the very reason the School Building Authority was created by the West Virginia Legislature in 1989.</p> <p>As a local employer, I take care of my employees and in turn they provide work that is highly skilled, therefore; we can provide great quality work on public projects. It is nearly impossible to compete with contractors that do not practice the same quality construction standards or exercise</p>	N	<p>We respect this opinion and thank you for your work on SBA Projects. However, we feel the concerns expressed here are unwarranted. We believe this policy creates clear and fair bidding standards, active project administration roles for all parties involved, and a data-driven evaluation program that requires strict conformance and compliance to all project requirements. We know that we do not want subjective evaluation criteria – some of which is not in accordance with the Fairness in Competitive Bidding Act</p>

		<p>the practices necessary to ensure the safety of their craftsmen.</p> <p>Thank you for considering my comments in this matter.</p> <p>Very truly yours,</p> <p>JARVIS, DOWNING &amp; EMCH, INC.</p>		<p>(WV Code §5-22-1) – for bidders that leave the LEAs we serve susceptible to incorrect interpretation and potential litigation. For these reasons, the SBA has issued these Proposed Amendments.</p> <p>The questions your company has asked are appropriate, but not in a subjective, categorically undefinable post-bid evaluation criteria as a condition of being evaluated for an award of a contract. These questions have become a part of conformance and compliance requirements as described in all SBA contract documents.</p> <p>We thank you for your commitment to providing quality work on school construction projects.</p>
<p>6/20/19</p> <p>6/29/19</p>	<p>Lane Ferguson, President, Nitro Construction Services, Nitro, WV</p> <p>Stephen Borlie, President, Borlie Mechanical Contracting, LLC, Inwood, WV</p>	<p>I am writing to document my confusion and disappointment that the WV School Building Authority is planning to remove the 18 Point Bid Criteria from the proposed new policies.</p> <p>Without this language in place, how will the SBA know if a contractor is complying with all state and federal regulations, has a good safety record, and no history of financial trouble among other important metrics?</p> <p>As a local employer, I take care of my employees and in turn they provide work that is highly skilled, and we can provide great quality work on public projects. It is nearly impossible to compete with contractors that can hide potentially unscrupulous business practices when there is no accountability in the bidding process.</p> <p>The 18 Points Bid Criteria may not be perfect currently, but eliminating it altogether is short sighted and I suggest that you work to improve upon it instead of getting rid of it altogether.</p> <p>Thank you for your consideration in this matter.</p> <p>Sincerely,</p> <p>Name Address</p>	N	<p>We respect this opinion and thank you for your work on SBA Projects. However, we feel the concerns expressed here are unwarranted. We believe this policy creates clear and fair bidding standards, active project administration roles for all parties involved, and a data-driven evaluation program that requires strict conformance and compliance to all project requirements. We know that we do not want subjective evaluation criteria – some of which is not in accordance with the Fairness in Competitive Bidding Act (WV Code §5-22-1) – for bidders that leave the LEAs we serve susceptible to incorrect interpretation and potential litigation. For these reasons, the SBA has issued these Proposed Amendments.</p> <p>The questions your company has asked are appropriate, but not in a subjective, categorically undefinable post-bid evaluation criteria as a condition of being evaluated for an award of a contract. These questions have become</p>

				<p>a part of conformance and compliance requirements as described in all SBA contract documents.</p> <p>We thank you for your commitment to providing quality work on school construction projects.</p>
7/1/19	Charles A. Parker, IUOE Local 132 Union Hall, Charleston, WV	<p>I am writing to express my firm opposition to the WV School Building Authority plan to remove the 18 Point Bid Criteria from the Policy and Procedures Handbook.</p> <p>As a representative of construction workers, I am particularly concerned with the proposed elimination of the 18-point responsible contractor bid criteria and questionnaire. I see nothing in the proposed policy where a contractor must show they have ever successfully built a school before, or where a subcontractor even needs to show they have not been banned from public construction work in our state or other states.</p> <p>I also don't see anything that prohibits the use of subcontractors who have been banned from bidding public projects.</p> <p>The public construction industry needs a definition of the term lowest responsible qualified bidder. Please reconsider this proposal. Just because a contractor has a license and can get a bond does not mean they are qualified to build a school.</p> <p>We as tax payer deserve to know that our money is being spent with qualified contractors, who can do the requested work.</p> <p>Sincerely,</p> <p>Charles A. Parker IUOE 132 Business Manager</p>	N	<p>We respect this opinion; however, we feel the concerns expressed here are unwarranted. We believe this policy creates clear and fair bidding standards, active project administration roles for all parties involved, and a data-driven evaluation program that requires strict conformance and compliance to all project requirements. We know that we do not want subjective evaluation criteria – some of which is not in accordance with the Fairness in Competitive Bidding Act (WV Code §5-22-1) – for bidders that leave the LEAs we serve susceptible to incorrect interpretation and potential litigation. For these reasons, the SBA has issued these Proposed Amendments.</p> <p>The Fairness in Competitive Bidding Act does not require, nor has the SBA ever required, that contractors must show they have successfully built a school before. LEAs may not accept bids from Contractors and Subcontractors are not who have been banned from bidding public projects. The Legislature has defined the term “lowest qualified responsible bidder” and we have followed this definition in the Proposed Amendments.</p>
7/1/19	Bryan L. Raber, Business Manager, U.A. Plumbers & Pipefitters Local Union 152, Morgantown, WV	<p>I wanted to let you know that myself and my 430 members of the Plumbers and Pipefitters local 152 in Morgantown WV OPPOSE the elimination of the 18 point responsible contractor language from the school building authority's bid documents. This Bid criteria was added to make sure that the Tax payer is getting the most qualified and responsible contractors on the School projects. The elimination of the prevailing wage has already caused school projects to have been constructed poorly, completion dates pushed out for months, the use of out of state workers and unfortunately workers</p>	N	<p>We disagree with this opinion. We believe this policy creates clear and fair bidding standards, active project administration roles for all parties involved, and a data-driven evaluation program that requires strict conformance and compliance to all project</p>

		from out of the United States. If this is eliminated you will have contractors bidding without proper bonding or any commercial building experience and the end result will be a tragedy. Once again we strongly OPPOSE the elimination of the 18 point responsible contractor language.		requirements. We know that we do not want subjective evaluation criteria – some of which is not in accordance with the Fairness in Competitive Bidding Act (WV Code §5-22-1) – for bidders that leave the LEAs we serve susceptible to incorrect interpretation and potential litigation. For these reasons, the SBA has issued these Proposed Amendments.
7/1/19	Doyle B. Baird, President, General Truck Drivers and Helpers Local Union No. 92, Canton, OH	I am writing to express my firm opposition to the WV School Building Authority plan to remove the 18 Point Bid Criteria from the proposed new policies.  While the current language may not be perfect and could be improved, eliminating it sends the wrong message and will lead our state in the wrong direction.  Just because a contractor has a license and can get a bond does not mean they are qualified to build a school.  The SBA has been a leader in developing rational, commons sense definition of the term “lowest qualified responsible” bid. There is no reason to reverse this leadership.  Sincerely,  Name Address	N	We respect this opinion; however, we feel the concerns expressed here are unwarranted. We believe this policy creates clear and fair bidding standards, active project administration roles for all parties involved, and a data-driven evaluation program that requires strict conformance and compliance to all project requirements. We know that we do not want subjective evaluation criteria – some of which is not in accordance with the Fairness in Competitive Bidding Act (WV Code §5-22-1) – for bidders that leave the LEAs we serve susceptible to incorrect interpretation and potential litigation. For these reasons, the SBA has issued these Proposed Amendments.  The Fairness in Competitive Bidding Act does not require, nor has the SBA ever required, that contractors must show they have successfully built a school before. LEAs may not accept bids from Contractors and Subcontractors are not who have been banned from bidding public projects. The Legislature has defined the term “lowest qualified responsible bidder” and we have followed this definition in the Proposed Amendments.
7/3/19	Allen M. Nelson, Training Director, IUOE 132			
7/2/19	Luther Lasure, Executive Director, Kanawha Valley Builders	As the executive director of the Kanawha Valley Builders Association, I represent the interests of some of West Virginia’s largest and most established general contractors, along with mechanical, plumbing, electrical, and a host of other major subcontractors. Today, with one voice, we write to voice our concern with the possible elimination of the SBA’s 18-Point Resolution.		We respect this opinion and thank you for your service to the Kanawha Valley area. However, we feel the concerns expressed here are unwarranted. We believe we have made strides to address

	Association, Charleston, WV	<p>Our members spend nearly \$500,000 annually to assure our employees are drug-free and trained in all OSHA safety standards, as well as over \$1M a year on apprenticeship programs certified by the federal government. Our commitment to a safe, drug-free, and skilled workforce, is unmatched in the private or public sectors.</p> <p>We have witnessed companies owned by politicians or other prominent people, produce less than acceptable school construction projects, who are allowed to continue bidding, and being awarded projects. Regardless of whether or not the 18-Point Resolution is rescinded the taxpayers of West Virginia must have a means by which to reject bids by contractors with a history of poor performance (quality, on-time completion, change orders, safety, etc.).</p> <p>The county BOE's and/or the SBA should pre-qualify contractors and only contractors with a proven track record be allowed to submit bids on a project. Furthermore, given the ever-increasing complexities of today's HVAC, environmental controls, and electrical systems, those major subcontractors should also be pre-qualified and required to post a payment and performance bond as well.</p> <p>The taxpayers of West Virginia should not be forced to accept low-bid contractors who cannot, will not, or has not been able to consistently perform to standards the private sector would never tolerate.</p> <p>As we have in the past, we would welcome the opportunity to have a seat at the table when the SBA is considering rule changes or reviewing contractor performance and qualifications.</p> <p>We thank you for taking the time to consider our stance on what we believe to be a critical issue for the SBA, the county BOE's and our taxpayers.</p> <p>Sincerely,</p> <p>Luther L. Lasure Executive Director</p>		<p>the concerns in this letter by introducing new amendments to this policy that create clear and fair bidding standards, active project administration roles for all parties involved, and a data-driven evaluation program that requires strict conformance and compliance to all project requirements. We know that we do not want subjective evaluation criteria – some of which is not in accordance with the Fairness in Competitive Bidding Act (WV Code §5-22-1) – for bidders that leave the LEAs we serve susceptible to incorrect interpretation and potential litigation. For these reasons, the SBA has issued these Proposed Amendments.</p>
7/2/19	David R. Baldwin, Saint Albans, WV	As a proud West Virginia construction worker, I am writing to express my concerns with the proposed Policy and Procedures Handbook. I am particularly concerned with the proposed elimination of the 18-point responsible contractor bid criteria and questionnaire.		We respect this opinion; however, we feel the concerns expressed here are unwarranted. We believe this policy creates clear and fair bidding standards, active project administration roles for all parties involved, and a data-driven evaluation program that requires strict conformance and compliance to all project requirements. We know that we do not want subjective evaluation criteria – some of which is not in
7/2/19	Jeremy Jeffers, Director – Apprenticeship & Training, MARCC- WV Carpenters JATC, Parkersburg, WV	<p>I see nothing in the proposed policy where a contractor must show they have ever successfully built a school before, or where the contractor even needs to show they have not been banned from public construction work in West Virginia or any other state.</p> <p>I also don't see anything that prohibits the use of subcontractors who have been banned from bidding public projects.</p>		

		<p>The public construction industry needs a definition of the term lowest responsible qualified bidder. Please reconsider this proposal.</p> <p>Sincerely, David R. Baldwin</p>		<p>accordance with the Fairness in Competitive Bidding Act (WV Code §5-22-1) – for bidders that leave the LEAs we serve susceptible to incorrect interpretation and potential litigation. For these reasons, the SBA has issued these Proposed Amendments.</p> <p>The Fairness in Competitive Bidding Act does not require, nor has the SBA ever required, that contractors must show they have successfully built a school before. LEAs may not accept bids from Contractors and Subcontractors are not who have been banned from bidding public projects. The Legislature has defined the term “lowest qualified responsible bidder” and we have followed this definition in the Proposed Amendments.</p>
<b>Policy &amp; Procedures Handbook – Chapter 5</b>				
<b>Policy &amp; Procedures Handbook – Appendix</b>				